

**ORIGINAL**

In The Court of Appeals of the State of  
Mississippi

No. 2015-15-00595-COA

Clyde Campbell

Appellant

**FILED**

VERSUS

JUL 24 2015

State of Mississippi

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

Appellee

ON Appeal from the Circuit Court of  
Adams County, Mississippi

Brief of Appellant

Oral Argument Is not Requested

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Certificate of Interested persons

The Undersigned prose of Appellant Certifies that the following listed person have AN Interest In the Outcome of this Case. These Representations Are made In order that the Judges of the Court may Evaluate possible disqualifications OR RECUSAL.

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So, Certify this the 24<sup>th</sup> day of July,  
2015.

Clyde Campbell #42321  
Clyde Campbell #42321  
prose

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## Statement of the Case

Appellant Clyde Campbell, In Cause number 6630 On A Charge of A + B With Intent, was heretofore on July the 2nd, 1974, Arraigned In the presence of his Attorney and entered A plea of Not Guilty and that said cause was from the July 1974 term of the Circuit Court to the November 1974 term of said Court.

## Statement of facts

ON OR about DEC. 4, 1974, Appellant was charge with A+B with Intent to Kill and murder. Appellant entered a plea of guilty after first pleading not guilty to the charges after conferring with Counsel on this matter. Appellant contends that he was not advised of the mandatory period by either his Attorney or trial Judge.

## Statement of the Issue

Whether Appellant's Received AN Illegal Sentence due to his plea of Guilty was not knowingly and Intelligently made through his Counsel

Whether Appellant's Guilty plea was freely Voluntary and Intelligently Entered due to Attorney Advice.

Whether Appellant's Guilty plea knowingly, Voluntary and Intelligently made in compliance with rule 3.03 of the Mississippi Uniform Criminal Rules of Circuit Court procedure?

# Argument ONE

Whether Appellant's Received An Illegal Sentence due to his plea of Guilty Was Not Knowingly and Intelligently Made through his Counsel.

The Applicable Standard for determining the validity of guilty pleas under due process was set forth in *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). There the Supreme Court held that a guilty plea is only valid if it is both voluntary and intelligent. *Id.* 395 U.S. at 242, 89 S. Ct. at 1711. Also see *North Carolina v. Alford*, 400 U.S. 25, 31 91 S. Ct. 160, 164, 27 L. Ed. 2d 162 (1970) (The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative course of action open to the defendant). Likewise, in *Brady v. United States*, 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970), the Court held that for a plea to be voluntary and intelligent, a defendant must be apprised of the direct consequences of entering the plea. *Id.* 397 U.S. at 755, 90 S. Ct. at 1972 (quoting *Shelton v. United States*, 246 F. 2d 571, 572 n.2 (5th Cir. 1957)).

The Supreme Court test the voluntariness of a

plea by considering the totality of the circumstances. See *Berry v. Mintzes*, 726 F.2d 1142, 1146 (6th Cir. 1984) cert. denied, 467 U.S. 1245, 104 S.Ct. 3520, 82 L.Ed. 828 (1984). The Assistance of Counsel received by a defendant is relevant to the question of whether a defendant's guilty plea was knowing and intelligent insofar as it affects the defendant's knowledge and understanding. *United States v. Frye*, 738 F.2d 196, 199 (7th Cir. 1984). (The Appellant is also raising by separate argument that he was denied effective assistance of counsel.)

There are state supreme court decisions to support the Appellant's proposition. In *Vittitoe v. State*, 556 So.2d 1062 (Miss. 1990), the court stated that a guilty plea must emanate from the accused's informed consent. In a similar context, in *Sanders v. State*, 440 So.2d 278, 283-284 (Miss. 1982), the court stated:

The question whether a plea of guilty was illegal as voluntary and knowing one necessary involves issues of fact. Advice received by the defendant from his attorney and relied upon by him in tendering his plea is a major area of factual inquiry. *Chavez v. Wilson*, 417 F.2d 584, 586 (9th Cir. 1969). For example, counsel's representation to

the defendant that he will receive a specified minimal sentence may render a guilty plea involuntary. *Mosher v. Lavalley*, 491 F.2d 1346 (2<sup>nd</sup> Cir.) cert. denied, 416 U.S. 906, 94 S.Ct. 1611, 40 L.Ed.2d 111 (1974). Where defense counsel lies to the defendant regarding the sentence he will receive, the plea may be subject to collateral attack. Where defense counsel advises the defendant to lie and tell the court that the guilty plea has not been induced by promises of leniency (when in fact it has), the plea may be attacked. The law is clear that where the defendant receives any such advice of counsel, and where the defendant receives such advice of his counsel relies on it, the plea has not been knowingly and intelligently made and is thus subject to attack. *Burgin v. State*, 522 Sw.2d 159 (Mo. App. 1975).

Considering the legal argument made, this court should turn to whether the Appellant's guilty plea was illegal, voluntary and knowing. See *Smith v. McCotter*, 786 F.2d 697, 701 (5<sup>th</sup> Cir. 1986).

The Appellant plead guilty to Assault and battery with the intent to kill and murder. Appellant informed his Attorney that he did not want to accept the District Attorney offer. Appellant contends

that his Attorney Advised him to plead guilty to an Illegal plea. Appellant told his Attorney that he was not pleading guilty to something that he didn't do or commit. Appellant's Attorney then told the Appellant that there was no other choice but to plead guilty because, if he took it to trial, then he would receive a life sentence on the Assault and Battery with the Intent to Kill and Murder. Appellant told his Attorney that, if he pleaded guilty, that he would be pleading to an Illegal plea. Appellant contends to his Attorney that he is Innocent of the crime in which he was being charged.

Appellant claimed that his Illegal plea has prejudiced him because at the time his Attorney came to him and advised him to take the plea, Appellant had no choice at all because he was facing a lot of time with the offense charged in the indictment. Appellant contends that this is a miscarriage of justice for his Attorney to coerce him to plead guilty to anything more than twenty years, which he was promised from the door. Appellant asserts that in deference, it seems that many courts miss the forest for the trees, looking solely to technical guidance from some rule deemed infallible and

therefore Inflexible for Any type of Unforeseen Situation, A Examination of this guilty plea Should not Ignore A basic Ingredient of the human Character. What Is Involved In A plea of guilty to A Serious felony? It Is the Standing In A public place before A Sombre Judge And Acknowledging to the whole world (friends, family, Associates And Acquaintances) that you have Committed A Morally Reprehensible Act.

Appellant Contends that he Can not Imagine Anything More difficult for A Rational person to plead guilty In Open Court to A Serious Crime. If he Is In fact Innocent. Indeed, It poses AN Almost Insuperable burden upon A guilty person to plead guilty. There Is not one Court that Could state that there Is not A Lawyer who has defended At least five felonies who has not Witnessed this phenomenon. The Accused All too frequently Refuses, to the Chagrin of his Attorney And his own later Regret, A Lenient bargain offered by the Overburdened prosecution. Appellant Contends that In preparation for the plea hearing, his Attorney Advised him that when the Judge Asked him A question, he Should Respond "yes" and not hesitate or go Into long drawn Answer. Appellant's

Contends that his Attorney provided him with Incorrect Advice And Information to Induce him to plead guilty, Misinformed him As to the possible Sentence the Court would Impose and had him to lie to the Court, Like he went over A lots of paperwork with him Concerning the plea.

This case is similar in many respects to Horton v. State, 584 So. 2d 704 (Miss. 1991). In Horton, the defendant filed for post-conviction relief on grounds that he was not advised of his Constitutional rights to Avoid self-Incrimination. The Trial Court summarily dismissed the petition upon scrutinizing the plea hearing transcript. This Court concluded that the trial Judge had not informed Horton of his rights to Avoid self-Incrimination and Remanded the case for An Evidentiary hearing on whether the defendant had fully understood the Nature of his guilty plea. (See Vittitoe v. State, 556 So. 2d 1062 (Miss. 1990) (conviction and sentence based on guilty plea Reversed where trial Court found that defendant was not aware of mandatory Minimum sentence at the time of plea) As to Horton, the transcripts of Appellant's plea hearing does not reflect that he was advised concerning the rights of which he Allegedly claims Ignorance.

## Argument two

Whether Appellant's Guilty plea was freely, Voluntary And Intelligently Entered due to Attorney Advice.

Appellant contends that his guilty plea was Involuntary As a matter of law because his Right Against Self-Incrimination As Required by *Boykin v. Alabama*, 395 U.S. 937, 89 S. Ct. 1709, 23 L. Ed. 2d 974 (1969) was violated. A defendant who enters such a plea simultaneously waives several Constitutional Rights, including his privilege Against Compulsory Self-Incrimination, his Right to trial by Jury and his right to Confront his Accusers for this waiver to be valid Under the due process Clause. It must be an Intentional Relinquishment or Abandonment of a known Right or privilege. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938).

Consequently, if a defendant's guilty plea is not equally Voluntary and knowing, it has been obtained in violation of due process and therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal charge. It can not be truly Voluntary unless the defendant

possesses AN Understanding of the law In Relation to the fact. The rights In question prior to pleading guilty, Either from Trial Judge or from Some other Source. See: Wilson, 577 So. 2d At 397 (While A transcript of the proceeding Is Essential, other offers of Clear and Convincing Evidence which prove that the defendant Entered A guilty plea voluntarily Are sufficient. Appellant's stated that If he would have known that he would receive A mandatory Sentence, he would have Insist In going to trial.

## Argument three

Whether Appellant's Guilty plea knowingly, voluntarily and intelligently made in compliance with Rule 3.03 of the Mississippi Uniform Criminal Rules of Circuit Court procedure?

Rule 3.03, miss. unif. crim. R. cir. ct. prac. (1992) provides in pertinent part:

(3) Advice to the defendant. When the defendant is arraigned and wishes to plead guilty to the offense charged, it is the duty of the trial court to address the defendant personally and to inquire and determine:

B. That the accused understands the nature and consequences of his plea, and the maximum and minimum penalties provided by law; ...

Pursuant to the Mississippi Uniform post-Conviction Collateral Relief Act, Miss. Code Ann., sections 99-39-1 through 99-39-29 (supp. 1992). A petitioner is entitled to an in court opportunity to prove his

Claims If the Claim Are procedurally Alive Substantially Showing denial of A state or federal right.

In *Vittitoe v. State*, 556 So. 2d 1062 (Miss. 1990), this Court stated :

Before A person may plead guilty to A felony he must be Informed of his rights, the Nature And Consequences of the Act he Contemplates, And Any relevant facts And Circumstances, And thereafter, Voluntarily enter the pleas. *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). The question Necessarily Involves Issues of fact. *Sanders v. State*, 440 So. 2d 278, 283 (Miss. 1983). Over the years the law has provided A Number of Criteria for Judging Charges of Involuntariness, Such as the quality of the advice of Counsel. *Leatherwood v. State*, 539 So. 2d 1378, 1388 (Miss. 1989). See also *Myers v. State*, 583 So. 2d 174 (Miss. 1991); *Wilson v. State*, 577 So. 2d 394 (Miss. 1991). Furthermore, A Sentence and Conviction based upon A guilty plea where A defendant was not made aware of A Mandatory Minimum Sentence At the time of the plea can be reversed. *Alexander v. State*, 605 So. 2d 1170, 1172 (Miss. 1992) (citing *Vittitoe v. State*, 556 So. 2d 1062 (Miss. 1990)). In *Alexander*, the defendant Alleged that he pled guilty to Armed Robbery after his Attorney Assured him that he would be Eligible

for parole after serving one-fourth of his sentence, that is, three years and nine months. The defendant did not learn that there was a mandatory ten-year sentence required for an armed robbery conviction until he arrived at the penitentiary. This Court reversed and remanded the defendant's case for an evidentiary hearing to be held on the questions of ineffective assistance of counsel, and whether the defendant's 'guilty' plea was made knowingly, voluntarily and intelligently.

Appellant contends that at no time he was advised either by his counsel or by the trial judge that there was a mandatory minimum sentence under section 47-7-3 Miss. Code Ann. (1972), as amended.

Appellant contends that he received ineffective assistance of counsel during both the plea and sentence. The claim of ineffective assistance of counsel is evaluated by the standards set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). *Strickland* also applies to a guilty plea. (Citing *Schmitt v. State*, 500 So. 2d 148, 154 (Miss. 1990)) The two-pronged *Strickland* test is:

- (1) whether counsel's performance was deficient, and, if so, (2) whether the deficient performance

was prejudicial to the defendant in the sense that our confidence in the correctness of the outcome is undermined. Neal v. State, 525 So. 2d 1279, 1281 (Miss. 1987).

This Court has held that when a criminal defendant alleges that he pleaded guilty without being advised by his attorney as to the maximum and minimum sentence he is subject to, a question of fact arises as to the proficiency of the attorney's performance. Alexander, 605 So. 2d at 1173

Appellant is entitled to an evidentiary hearing pursuant to Miss. Code Ann. section 99-39-13 through 99-39-23 (Supp. 1992) on the voluntariness of his guilty plea, and on whether Appellant was afforded effective assistance of counsel during the plea process.

## Conclusion

Appellant has made A prima facie showing of A series of Constitutional violation Combined and OR Separate that allow Immediate Resolution.

Appellant believe that he should be Reviewed Under A preponderance of Evident Standard. Miss. Code ANN section 99-39-23(7) (Supp. 1994). The Court shall make Specific finding and Conclusion of Law to Each Arguments presented.

Appellant In good faith believe he IS Entitled to the Redress which he seek by Such Sort.

Respectfully Submitted

Clyde Campbell #42321  
Clyde Campbell #42321

# Certificate of Service

This is to certify that I Clyde Campbell, prose, have this day served A true Correct copy of the Appellant Brief, to the parties below by United States mail first class, postage prepaid, Addressed As follows :

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I Done, this the 24<sup>th</sup> Day of July 2015.